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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. 2:90-CV-00520-KJM-DB

**PLAINTIFFS' NOTICE OF MOTION
AND EXPEDITED MOTION FOR AN
ORDER RE QUARANTINE AND
ISOLATION**

Judge: Hon. Kimberly J. Mueller
Date: October 1, 2020
Time: 2:00 pm
Crtrm.: 3, 15th Floor (Videoconference)

NOTICE OF MOTION AND EXPEDITED MOTION

PLEASE TAKE NOTICE that on October 1, 2020, or as soon thereafter as the matter may be heard by the above Court, Plaintiffs will and hereby do move, pursuant to Civil L.R. 230 and this Court's September 24, 2020 Order setting an expedited briefing schedule, ECF No. 6883, for an order directing Defendants to address the needs of the *Coleman* class in their quarantine and isolation plans. Specifically, Plaintiffs seek an order requiring that Defendants (1) develop, within two weeks, a safe plan to set aside and maintain during the COVID-19 pandemic sufficient separate quarantine space for class members at the EOP and higher levels of care, (2) create policies, within two weeks, governing these higher-acuity mental health patients in both quarantine and isolation settings, and (3) issue an interim directive requiring all CDCR institutions to ensure separate programming and appropriate mental health care for these patients in existing quarantine and isolation spaces. Additionally, Plaintiffs request that the Court order the Special Master to monitor Defendants' compliance with these requirements.

This Expedited Motion is supported by the attached Memorandum of Points and Authorities, the Proposed Order, the supporting Declaration, and the entire record in this matter.

DATED: September 25, 2020

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Marc J. Shinn-Krantz

Marc J. Shinn-Krantz

Attorneys for Plaintiffs

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Case No. 2:90-CV-00520-KJM-DB

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF EXPEDITED MOTION
FOR AN ORDER REGARDING
QUARANTINE AND ISOLATION**

Judge: Hon. Kimberly J. Mueller
Date: October 1, 2020
Time: 2:00 PM
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MEMORANDUM OF POINTS AND AUTHORITIES

The existing remedial orders in this case, including the Mental Health Services Delivery System Program Guide (“Program Guide”), have always required CDCR to house *Coleman* class members at the Enhanced Outpatient Program (“EOP”) level of care in housing that is separate from the general population. The orders also require CDCR to house patients requiring hospital-level care within CDCR either at designated Psychiatric Inpatient Programs (“PIPs”), or designated Mental Health Crisis Beds (“MHCBS”). CDCR is over six months into its response to the COVID-19 pandemic, and well over 13,000 cases have been confirmed among the incarcerated population and over 3,500 cases among staff according to CDCR’s public online trackers. *See* <https://www.cdcr.ca.gov/covid19/population-status-tracking/>; <https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/>. Yet even after extensive efforts in the *Plata* and *Armstrong* cases¹ to set aside quarantine and isolation space, Defendants still have not created any plan for separate quarantine units for *Coleman* class members at the EOP and higher levels of care, nor any policies or procedures governing programming and treatment for these patients during quarantine and isolation. CDCR does not even have a plan for a plan and has staked out its position of opposition to even the idea of separating EOP patients in quarantine. In the meantime, Defendants have presented their quarantine and isolation plan to the *Plata* court without reference to the EOP separation issue—that has been repeatedly raised in multiple meetings by the Special Master and his experts, and Plaintiffs’ counsel—and the *Plata* court has ordered that the quarantine and isolation plan be rapidly implemented. Plaintiffs request that the Court order Defendants to promptly revise their quarantine and isolation plan to include appropriate separate space for EOP and higher levels of care and so inform the *Plata* court. If CDCR cannot find the necessary space, then it cannot safely house these patients and

¹ *Plata v. Newsom*, Case No. 01-cv-1351-JST (N.D. Cal.); *Armstrong v. Newsom*, Case No. 94-cv-2307-CW (N.D. Cal.).

1 should place them in the community.

2 **I. THE COURT SHOULD ORDER DEFENDANTS TO SET ASIDE**
 3 **SEPARATE QUARANTINE SPACE, CREATE GOVERNING POLICIES**
 4 **FOR QUARANTINE AND ISOLATION, AND ISSUE AN INTERIM**
 5 **DIRECTIVE TO PROTECT HIGH-ACUITY CLASS MEMBERS.**

6 **A. Defendants Have Failed To Account For The *Coleman* Class During**
 7 **Their Quarantine And Isolation Bed Planning To Date.**

8 On July 22, 2020, the *Plata* court ordered CDCR to set aside isolation and
 9 quarantine space at each institution. *Plata* ECF No. 3401. On July 28, as part of an order
 10 generally addressing the pandemic's disruptions of mental health care, this Court
 11 specifically addressed the *Plata* quarantine and isolation space process, directing that
 12 CDCR work with the Special Master "to ensure no further harm results to the delivery of
 13 mental health care to members of the *Coleman* class." ECF No. 6791 at 4-5. By
 14 September 22, the designation of quarantine units was complete, and the *Plata* court
 15 approved a deadline for activating the last few units. *See Plata* ECF No. 3455. CDCR is
 16 declining to provide designated quarantine space for EOP patients, but instead plans to mix
 17 such patients with the general population on the quarantine units.

18 CDCR's intransigence regarding the EOP patients is in contrast with their
 19 willingness to address the needs of other incarcerated persons with disabilities. On July
 20 20, 2020, after Plaintiffs' counsel in *Armstrong* filed an emergency motion, CDCR
 21 stipulated to an order requiring the *Armstrong* Court Expert to conduct a review of the
 22 sufficiency of CDCR's supply of accessible housing for isolation and quarantine, and
 23 requiring Defendants to house all *Armstrong* plaintiffs in safe, accessible housing, and in
 24 any circumstances where a class member is not housed appropriately, to provide notice
 25 within 24 hours to Plaintiffs, the *Armstrong* Expert, and the *Plata* Receiver, among other
 26 protections. *Armstrong* ECF No. 3015 at 2. This process has led to revisions of the
 27 quarantine plans to address disability access. *See Armstrong* ECF No. 3072 at 2-3.

28 In August, CDCR decision-makers appeared open to respecting EOP housing
 requirements in quarantine. *See Fourth Joint Update on COVID-19 Task Force*, ECF No.

6841 at 9 (during the August 25, 2020 Task Force meeting discussion regarding quarantine plans, a “member of the Special Master’s team indicated understanding that CDCR planned to follow general principles of keeping EOP patients in EOP housing and, if patients must be moved, moving them into separate EOP housing unless CDCR is unable to do so”). By early September, however, CDCR announced that it would not quarantine EOP class members separately from non-EOP class members. *See* Fifth Joint Update on COVID-19 Task Force, ECF No. 6850 at 9 (report on the September 1, 2020 Task Force meeting that “CDCR disagrees with the Special Master’s experts’ views that CDCR should quarantine EOP patients separately from non-EOP incarcerated people for clinical reasons.”). On September 4, Plaintiffs’ counsel asked in writing that CDCR reconsider. *See id.* at 15-25. On September 23, 2020, CDCR confirmed in writing that it would not reconsider. *See* Shinn-Krantz Decl. at ¶ 2 & Ex. A (Defendants’ September 23, 2020 Letter (“Defs.’ Ltr.”)). At the Third Quarterly Status Conference the next day, Defendants confirmed their position.

B. Defendants Are Deliberately Indifferent To The Substantial Risk Of Serious Harm To *Coleman* Class Members In Quarantine and Isolation.

Health emergencies require careful planning. The highest number of COVID-19 deaths in CDCR occurred at San Quentin after poorly planned prisoner transfers brought the virus there. Now, patients at EOP and higher levels of care are already being housed in the isolation and quarantine units recently set aside, with no plan or instruction being given to the institutions about how to protect and manage the patients, provide necessary mental health care and programming, or to protect them from harm from others.

Defendants argue that the practice of quarantine and isolation is nothing new in CDCR, which routinely deals with patients’ “influenza-like illness, tuberculosis, and gastroenteritis.” *See* Defs.’ Ltr. at 1. The current pandemic is far different in scope and deadliness. As of September 8, 2020 the total number of positive cases (active plus resolved) among the incarcerated population was 9,993, including 2,737 *Coleman* class members of whom 247 were at the EOP or higher level of care. *See* Fifth Joint Task Force

1 Update, ECF No. 6850 at 2. CDCR's rate of confirmed cases (112.5 per 1,000 people)
2 was six times higher than in the general public in California (18.7 per 1,000) and the
3 United States (19.0 per 1,000). *See id.* at 3. To date, the *Coleman* class, which is now
4 roughly 30% of the CDCR population, represents 27% of the known infections, yet 36% of
5 cumulative cases severe enough to require hospitalization, and 41% of deaths. *See*
6 *id.* at 2-3.

7 Defendants argue that because the number of EOP and higher patients requiring
8 isolation—i.e. those with confirmed currently active cases—is relatively low at any one
9 time, COVID-19 is not a big enough problem to justify creating separate housing space for
10 them. *See* Defs.' Ltr. at 3. This misses the point. The number of EOP and higher patients
11 requiring quarantine—i.e. those without confirmed cases but with some exposure—is
12 much higher. Likely a majority of high-acuity class members have already faced at least
13 some time in quarantine, whether they were housed in a designated *Coleman* unit or not.
14 The point of setting aside space now is so that Defendants have a plan to provide safe
15 treatment and programming to patients as more outbreaks inevitably spread throughout the
16 system. Defendants admit that they do not know how many *Coleman* class members are
17 quarantining in non-*Coleman* units. *See id.* CDCR must both determine who are the EOP
18 and higher level of care class members currently housed outside of the settings required by
19 the *Coleman* Program Guide and make plans to set aside separate quarantine units for these
20 individuals and the future class members who will otherwise be put in this position. For
21 example, on September 25, 2020 there were almost 500 EOP patients housed outside of
22 EOP programs, plus 150 patients at an inpatient level of care who are being housed in an
23 outpatient setting. *See* Shinn-Krantz Decl. at ¶ 3 & Ex. B (Defendants' Defendants'
24 COVID-19 Mental Health Operational Impact Dashboard).

25 Defendants also attempt to minimize the need for separate quarantine units by
26 contending that housing units designated for quarantine are medical units. *See* Defs. Ltr. at
27 2. There is no evidence that CDCR is using only medical units for quarantine and
28

1 isolation, and there is evidence to contrary in the maps they filed showing non-medical
2 housing units designated for these purposes. *See* ECF 6870 (under seal). A regular
3 housing unit does not suddenly become more therapeutic when a cellblock or dormitory is
4 placed on quarantine. CDCR may try to provide increased symptom screenings and
5 COVID-19 testing to people in quarantined housing units. That does not make the housing
6 “medical.” The people living there receive *reduced* or no mental health treatment, and
7 face sharper restrictions on programming. In the absence of policies governing aspects of
8 routine prison unit life such as phone calls, showers, and medication lines, many
9 quarantine units also are not the buttoned-up settings Defendants make them out to be.

10 Defendants contend that EOP housing requirements should not apply because
11 quarantine is short term. *See* Defs.’ Ltr. at 2. Defendants have not come forward with data
12 on the average length of stay for patients in quarantine, or how long it takes patients to
13 transfer to an appropriate setting after completing the quarantine. Indeed, while some
14 quarantines may last for a matter of weeks for asymptomatic class members, many class
15 members face repeated quarantine periods, and each period is indefinite and can stretch on
16 for months because every additional identified positive case or potential exposure in the
17 unit resets the clock. And for EOP and higher level of care class members placed in non-
18 *Coleman* quarantine units, it is highly unlikely that they will quickly transfer out to a
19 *Coleman* unit even after the formal quarantine period ends because Defendants have all but
20 shut down movement for mental health transfers. *See, e.g.*, Fifth Joint Update on COVID-
21 19 Task Force, ECF No. 6850 at 3 (about three-fourths of CDCR institutions are closed to
22 external movement, including all PIPs); *id.* at 7 (most patients cannot move to or from
23 closed institutions); *id.* at 4-5 (CDCR has not transferred a single patient requiring mental
24 health hospitalization to the Department of State Hospitals since the workweek of August
25 10-14, 2020).

26 The Court should require Defendants to engage in serious bed planning and
27 policymaking to ensure patients can be housed in a setting appropriate to their needs, in
28

1 accordance with the existing remedial orders in this case.

2 **C. Separate Housing At The Enhanced Outpatient Program (EOP) Level**
3 **Of Care Is A Necessary Cornerstone of the Remedy In This Case.**

4 Clinicians designate people for the EOP based on a determination that the patient
5 cannot function safely in the general population. *See* 2018 Program Guide, ECF 5864-1 at
6 52 (Program Guide page 12-4-3). The need for a sheltered treatment program was
7 recognized early in this case:

8 Inmates with severe mental illness often have difficulty with the
9 stresses of prison and are especially vulnerable to victimization
10 while in the general population. Creating a psychologically (and
perhaps physically) safer environment can reduce psychiatric
distress and crisis, disciplinary violations, and suicide attempts.

11 February 16, 1993 Mental Health Services Delivery System Study, Final Report, Scarlett
12 Carp and Associates, ECF No. 4399-2 at 58. Sheltered housing units are important not
13 only for treatment, but also to protect the lives and safety of EOP patients. *See* March 14,
14 2019 Memorandum to the Special Master from M. Shinn-Krantz at 7-10 (submitted *in*
15 *camera* on February 25, 2020 pursuant to Minute Order, ECF No. 6483). This Court
16 explained in its July 3, 2018 Order that “the Revised Program Guide makes clear EOP is a
17 residential program, synonymous with an inpatient setting.” *See* July 3, 2018 Order, ECF
18 No. 5850 at 5-6.

19 Separate housing is important to facilitate treatment. To the extent group treatment
20 can resume in a quarantined unit, it requires proximity among the patients. Individual
21 therapy requires getting the clinicians to the patients, and not having the clinicians
22 wandering among widely separated units. Access to treatment is all the more critical if the
23 quarantine patient is locked down, and suffers the risks of decompensation associated with
24 isolation in a cell for most of the day.

25 But even if the patients are locked down and receiving no treatment, separate
26 housing is still critical. Certain patients at EOP and higher levels of care are verbally
27 disruptive—for example talking or shout to themselves, which can provoke reactions from
28

1 people in other cells. One of the reasons for the sheltered aspect of the EOP program is to
 2 prevent this kind of disruption from escalating. In addition, providing time out of cell is
 3 critical, including for patients on quarantine, as CDCR's COVID-19 guidelines
 4 acknowledge. *See* July 17, 2020 Updated Control Strategies for Contacts to Cases of
 5 COVID-19, <https://cchcs.ca.gov/covid-19-interim-guidance/>, at "Quarantine Precautions
 6 and Conditions for COVID-19 and Influenza." This means safely allowing patients time in
 7 a dayroom or on a yard with others in the quarantine cohort. For EOP patients it means
 8 time with other EOP patients, not time in the general population.

9 The Court should order Defendants to engage in bed planning and policymaking to
 10 make available appropriate, Program Guide-required, separate housing for EOP patients.

11 **D. In EOP, Inpatient, and MHCB Units, CDCR Needs Single-Celled**
 12 **Isolation and Quarantine Space.**

13 For the purposes of isolation and quarantine, most PIP units already feature single-
 14 occupancy cells with solid doors. But some patients are double-celled or in dorm settings.²
 15 Many EOP patients are double-celled. Public health recommendations for quarantined
 16 housing is that patients be housed alone, in a single cell behind a solid door. Defendants
 17 have failed to follow these recommendations for incarcerated persons in dorm housing and
 18 double cells. Defendants must modify their quarantine and isolation plan to address this
 19 deficiency for Coleman class members at all levels of care, especially for those at EOP and
 20 higher levels of care.

21 Defendants also must plan for new PIP arrivals and discharges. Although Plaintiffs
 22 understand that the current plan is to isolate and quarantine PIP patients who are new
 23 arrivals in the PIP admissions units, this plan does not address the need for quarantine and
 24 isolation space for individuals in the dorms and double cells. Also, given that the August

25
 26 ² The following PIP units are dorms or double celled units where a patient may need to be
 27 moved to a single cell for quarantine: The PIP Intermediate Care Facility ("ICF") at CMF
 28 has many patients in dorms on A-2 (44 total beds) and A-3 (40 total beds); the ICF patients
 in the L-1 Unit at CMF are double celled; the ICF patients in units C-5/C-6 at SVSP are
 double celled; there are ICF patients in the four-person rooms in unit TC-1 at SVSP.

1 19, 2020 COVID-19 Screening and Testing Matrix for Patient Movement requires 14-day
 2 quarantines of all discharging patients as well as for new admissions, PIP admissions units
 3 may not have enough space for managing this movement. Defendants must set aside
 4 adequate space to quarantine incoming and outgoing patients, as well as for existing
 5 patients in dorm or double-celled housing.

6 In addition to setting aside sufficient space, Defendants must plan for how these PIP
 7 quarantine spaces will operate. Plaintiffs understand that, most of the time, single-celled
 8 individuals already housed in PIP units will remain in their cells for isolation and
 9 quarantine. Defendants must develop governing procedures to allow treatment to
 10 continue, ideally through individual and group face-to-face contact in a patient's unit in a
 11 manner allowing social distancing or, if absolutely necessary, at a patient's cell with the
 12 door open to provide for maximum confidentiality and therapeutic engagement. Similarly,
 13 Defendants must develop guidance for PIP clinicians on how to manage their patients
 14 during any outbreak impacting their caseloads.

15 **E. Defendants Have Multiple Ways To Accomplish Setting Aside Adequate**
 16 **Quarantine and Isolation Space, Including Releasing Class Members If**
Necessary.

17 Defendants have already identified quarantine and isolation space in every prison
 18 and mostly prepared that space for use. Through the *Armstrong* process, Defendants have
 19 made space specially available to people with disabilities requiring accessible housing
 20 features, including making physical alterations to existing spaces. The Court should order
 21 Defendants to likewise set aside separate *Coleman* housing everywhere EOP and higher
 22 level of care patients reside.

23 Some prisons can likely rely on those already-designated quarantine and isolation
 24 spaces. At CMC, the building set aside for quarantine and isolation, C-Yard, Building 5,
 25 has two distinct sides on each of its three floors. CMC can set aside one of the six distinct
 26 and separate spaces in this building for EOP patients. CMF, which has designated five
 27 housing units for isolation and quarantine on the most recent designations chart, can
 28

1 designate one of the five units as an EOP-only unit. Prisons with 180-degree style housing
 2 units, like SVSP and CSP-SAC, can make one of the three pods in a designated 180-degree
 3 building into an EOP and higher level of care quarantine space. In 270-degree style
 4 housing units with solid walls separating sections of the buildings, one physically separate
 5 portion of the building can be used for EOP and higher levels of care. At places like E-
 6 Yard at CHCF, where multiple 20-person tents will be used for isolation and quarantine, it
 7 should be relatively easy to designate an EOP-only tent for quarantine.

8 Where there are no physical plant solutions to provide safe, single-celled quarantine
 9 space for persons at the EOP and higher levels of care, CDCR must face the reality that it
 10 cannot safely hold these people. CDCR must identify non-custody options, including early
 11 release and community placement in such cases.

12 **F. Defendants Must Issue Immediate Interim Guidance To Protect EOP**
 13 **And Higher Level Of Care Class Members.**

14 In the immediate term, until Defendants identify and prepare separate quarantine
 15 spaces at each prison where EOP and higher level of care class members reside, and create
 16 governing policies, the CDCR must instruct staff to carefully provide separate yard,
 17 shower, medication lines, canteen, and telephone calls for EOP and higher level of care
 18 patients in the currently-operating quarantine units. Clinical and custodial staff must be
 19 instructed to ensure that these class members can access required mental health treatment
 20 commensurate with their level of care while they are confined to these units.

21 **II. PLAINTIFFS' REQUESTED RELIEF COMPLIES WITH THE PRISON**
 22 **LITIGATION REFORM ACT.**

23 Plaintiffs' requested relief satisfies the needs-narrowness-intrusiveness
 24 requirements of the Prison Litigation Reform Act. *See* 18 U.S.C. § 3626(a)(1)(A) in light
 25 of the long history of this litigation, Defendants' long-standing failure to provide
 26 constitutional mental health treatment, Defendants' outright refusal to provide the separate
 27 and safe quarantine spaces as required by this Court's remedial orders, Defendants' failure
 28 to create adequate governing policies for *Coleman* patients in the quarantine and isolation

spaces it has set aside in recent months, and the additional harm this is causing to higher acuity class members in violation of this Court's July 28, 2020 Order. *See* ECF No. 6791 at 4-5. The requested relief affords Defendants the latitude to craft the means by which they provide adequate housing spaces to class members. For example, Defendants may provide quarantine spaces within their already-existing quarantine spaces set aside pursuant to the *Plata* and *Armstrong* processes, or they may set aside new spaces, erect temporary housing, or release *Coleman* class members from CDCR custody into community or parole supervision.

CONCLUSION

For all of these reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' expedited motion and order Defendants to engage in prompt, focused bed planning to ensure Defendants (1) develop, within two weeks, a safe plan to set aside and maintain during the COVID-19 pandemic sufficient separate quarantine space for class members at the EOP and higher levels of care, (2) create policies, within two weeks, governing these higher-acuity mental health patients in both quarantine and isolation settings, and (3) issue an interim directive requiring all CDCR institutions to ensure separate programming and appropriate mental health care for these patients in existing quarantine and isolation spaces. Additionally, we request that the Court order the Special Master to monitor Defendants' compliance with these requirements.

DATED: September 25, 2020

Respectfully submitted,
ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Marc J. Shinn-Krantz
Marc J. Shinn-Krantz

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,
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v.
GAVIN NEWSOM, et al.,
Defendants.

Case No. 2:90-CV-00520-KJM-DB

DECLARATION OF MARC J. SHINN-KRANTZ IN SUPPORT OF PLAINTIFFS' EXPEDITED MOTION FOR AN ORDER FOR A NEW QUARANTINE AND ISOLATION PLAN

Judge: Hon. Kimberly J. Mueller
Date: October 1, 2020
Time: 2:00 pm

1 I, Marc J. Shinn-Krantz, declare:

2 1. I am an attorney duly admitted to practice before this Court. I am an
3 associate at the law firm of Rosen Bien Galvan & Grunfeld LLP, counsel of record for
4 Plaintiffs. I have personal knowledge of the facts set forth herein, and if called as a
5 witness, I could competently so testify. I make this declaration in support of Plaintiffs'
6 Expedited Motion For An Order For A New Quarantine And Isolation Plan.

7 2. On September 23, 2020, I received a letter from the CDCR Office of Legal
8 Affairs regarding Defendants' decision not to modify their current quarantine and isolation
9 plans to accommodate the *Coleman* class. A true and correct copy of the letter is attached
10 hereto as **Exhibit A**.

11 3. On September 25, 2020 around 1:30 pm, I reviewed Defendants' COVID-19
12 Mental Health Operational Impact Dashboard, and I exported and downloaded a copy of
13 the data as an eight-page PDF. A true and correct copy of the data is attached hereto as
14 **Exhibit B**. The "MHCB" tab (page 2) indicates there are currently eight MHCB level of
15 care patients housed in an outpatient setting. The "Acute" tab (page 3) indicates there is
16 currently one Acute Inpatient level of care patient housed in an outpatient setting. The
17 "ICF" tab (page 4) indicates there are currently 141 Intermediate Inpatient level of care
18 patients housed in an outpatient setting. The "ELOC & EOP" tab (page 7) indicates there
19 are currently 499 EOP level of care patients housed outside of an EOP bed.

20 I declare under penalty of perjury under the laws of the United States of America
21 that the foregoing is true and correct, and that this declaration is executed at El Cerrito, CA
22 this 25th day of September, 2020.

23
24 /s/ Marc J. Shinn-Krantz
25 Marc J. Shinn-Krantz
26
27
28

EXHIBIT A

From: Nick Weber
Sent: Wednesday, September 23, 2020 5:39 PM
To: Emma Cook; Bick, Joseph@CDCR; Toche, Diana@CDCR
Cc: Coleman Team - RBG Only; Steve Fama; Donald Specter; Armstrong Team - RBG only; 'arm-plo@prisonlaw.com'; Ed Swanson; Adriano.Hrvatin@doj.ca.gov; Elise Thorn; Tyler Heath; 'Damon.McClain@doj.ca.gov'; 'Silberfeld, Roman M.'; Danas, Glenn A.; Kyle.Lewis@doj.ca.gov; Lucas Hennes; Stafford, Carrie@CDCR; Melissa Bentz; Hockerson, Dillon@CDCR; Rashkis, Sean@DSH-S; Nina Raddatz; Christine.Ciccotti@dsh.ca.gov; Kent, Kristopher@DSH-S; Gipson, Connie@CDCR; Vincent Cullen; Moss, Joseph@CDCR; Lorey, Dawn@CDCR; Neill, Jennifer@CDCR
Subject: RE: Coleman: Plaintiffs' Letter re Isolation and Quarantine for EOP and Higher LOC Patients [IWOV-DMS.FID6429]
Attachments: Ltr. NW-TN re Addl ISO Quarantine Space 9.23.pdf

All,

Attached is Defendants' response to Plaintiffs' letter on Isolation and Quarantine for EOP and Higher LOC Patients.

Nick Weber
Attorney
Department of Corrections & Rehabilitation
1515 S Street, Suite 314S
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[REDACTED]

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From: Emma Cook <ECook@rbgg.com>
Sent: Friday, September 04, 2020 4:58 PM
To: Bick, Joseph@CDCR <Joseph.Bick@cdcr.ca.gov>; Toche, Diana@CDCR <Diana.Toche@cdcr.ca.gov>
Cc: Coleman Team - RBG Only <ColemanTeam-RBGOnly@rbgg.com>; Steve Fama <sfama@prisonlaw.com>; Donald Specter <dspecter@prisonlaw.com>; Armstrong Team - RBG only <ArmstrongTeam@rbgg.com>; 'arm-plo@prisonlaw.com' <arm-plo@prisonlaw.com>; Ed Swanson <ed@smllp.law>; Adriano.Hrvatin@doj.ca.gov; Elise Thorn <Elise.Thorn@doj.ca.gov>; Tyler Heath <Tyler.Heath@doj.ca.gov>; 'Damon.McClain@doj.ca.gov' <Damon.McClain@doj.ca.gov>; 'Silberfeld, Roman M.' <RSilberfeld@RobinsKaplan.com>; Danas, Glenn A. <GDanas@robinskaplan.com>; Kyle.Lewis@doj.ca.gov; Lucas Hennes <Lucas.Hennes@doj.ca.gov>; Stafford, Carrie@CDCR <Carrie.Stafford@cdcr.ca.gov>; Weber, Nicholas@CDCR <Nicholas.Weber@cdcr.ca.gov>; Bentz, Melissa@CDCR <Melissa.Bentz@cdcr.ca.gov>; Hockerson, Dillon@CDCR <Dillon.Hockerson@cdcr.ca.gov>; Rashkis, Sean@DSH-S <Sean.Rashkis@dsh.ca.gov>; Raddatz, Antonina@DSH-S <Antonina.Raddatz@dsh.ca.gov>; Christine.Ciccotti@dsh.ca.gov; Kent, Kristopher@DSH-S <Kristopher.Kent@dsh.ca.gov>; Gipson, Connie@CDCR <Connie.Gipson@cdcr.ca.gov>; Cullen, Vincent@CDCR <Vincent.Cullen@cdcr.ca.gov>; Moss, Joseph@CDCR <Joseph.Moss@cdcr.ca.gov>; Lorey, Dawn@CDCR <Dawn.Lorey@cdcr.ca.gov>; Neill, Jennifer@CDCR

Subject: Coleman: Plaintiffs' Letter re Isolation and Quarantine for EOP and Higher LOC Patients [IWOV-DMS.FID6429]

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Dear all,

Please see the attached letter from Thomas Nolan concerning plaintiffs' request for separate isolation and quarantine spaces for EOP and higher level of care patients.

Thank you and have a good weekend,

Emma Cook
Paralegal

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OFFICE OF LEGAL AFFAIRS

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General Counsel

P.O. Box 942883

Sacramento, CA 94283-0001



September 23, 2020

Tom Nolan
Rosen Bien Galvan and Grunfeld LLP
101 Mission Street, Sixth Floor
San Francisco, CA 94105

VIA EMAIL

Tom,

I write in response to Plaintiffs' September 4, 2020, letter regarding quarantine and isolation space for patients in the Enhanced Outpatient Program (EOP) level of care and above. According to Plaintiffs, Defendants should set aside separate medical quarantine and isolation space – a deviation from past practice – for patients in higher levels of mental health care. Plaintiffs base this proposition on the assumption that the California Department of Corrections and Rehabilitation (CDCR) is unable to manage mentally ill patients who are quarantined or isolated in mixed medical units with non-mentally ill inmates.

The practice of medically quarantining or isolating patients within CDCR is not new and was not developed in response to COVID-19. Nor is COVID-19 the first contagious illness to spread within CDCR. CDCR has had quarantine and isolation practices in place for years. For example, patients are routinely placed on quarantine or isolation for influenza-like illnesses, tuberculosis, and gastroenteritis. In these situations, *Coleman* class members are subject to the same quarantine and isolation practices as non-class members. *Coleman* class members may be quarantined or isolated within their housing unit, or they may be quarantined in a medical unit. CDCR ensures that class members in quarantine or isolation receive mental health care while on that status.

I. Plaintiffs' Request for Separate Quarantine and Isolation Space for EOP and PIP Patients is Misplaced

The overwhelming majority of inmates quarantined during COVID are quarantined as a group within their own housing unit. Those patients program together and are moved in small groups to yard, dayroom, and showers. Plaintiffs' concern appears centered around the set aside quarantine and isolation space at each institution, which was done at the direction of the *Plata* court. Plaintiffs' request is misplaced and mischaracterizes the nature and purpose of quarantine units. Plaintiffs' main concern with housing EOP patients in mixed units is that existing policy requires EOP patients to be housed separately from the general population. (September 4, 2020, letter at 3.) According to Plaintiffs, EOPs "are especially vulnerable to victimization while in the general population" and "the clinical prerequisite[] for placement into the EOP program is an 'inability to function in general population.'" (Id.)

However, a quarantine or isolation unit is not the general population.¹ Quarantine units are strictly controlled environments with a medical mission similar to that of a medical Outpatient Housing Unit (OHU) or Correctional Treatment Center (CTC). *Coleman* class members in need of medical treatment are routinely housed in OHUs or CTCs with non-*Coleman* class members. Like CTCs and OHUs, quarantine and isolation beds are not permanent housing placements. Their distinct medical mission protects against concerns of mixing class members with non-class members. In short, there is no clinical reason to create separate EOP or inpatient patient quarantine or isolation space.

Placement in quarantine or isolation, like placement in any medical unit, is time limited. During that time, patients receive daily screenings and are tested for the virus upon leaving the unit. Patients in quarantine or isolation are carefully monitored by medical and custody staff. Patients housed in set-aside quarantine units do not program with other patients on the unit in order to avoid exposure. Given the medical milieu and strict controls over the unit, EOP patients are unlikely to have negative interactions with non-EOP patients while on quarantine or isolation.

Coleman class members placed on quarantine or isolation status, and housed out of their normal housing unit, continue to receive mental health care in the quarantine or isolation unit. This is true for any such patient housed in an OHU or CTC, or housed in quarantine for any contagious illness, be it COVID, the flu, norovirus, or tuberculosis. Local treatment teams are well versed in following patients to the medical units such as the OHU, CTC, quarantine, or isolation units.

Similarly, there is no clinical need to set aside separate PIP quarantine or isolation space. It is unlikely that a patient housed in a dorm PIP setting would be exposed to COVID in a group setting and, before returning to his housing unit, find out about the exposure. Such a scenario normally takes place over a period of days by which time the exposed patient, or patients, have already comingled with the housing unit necessitating the entire unit to quarantine in place. In the rare event that, while returning to his dorm, a patient learns he just left a group session hosted by a COVID positive employee that patient would be quarantined in an available single cell or sent to the institution's quarantine unit. Should the patient be housed temporarily in the quarantine unit, the patient's treatment team would still ensure his mental health treatment needs are met.

Plaintiffs also argue in favor of more programming within quarantine units. (September 4, 2020, letter at page 4.) However, this recommendation is medically unsound and contrary to the opinion of the Receiver's public health experts. Quarantine set aside space is used to determine whether a patient has contracted a virus. Allowing patients who often come from different parts of an institution to comingle amongst themselves defeats the purpose of the unit and will only lead to further spread of the disease.

¹ Nor is a quarantine unit akin to an ASU, as suggested by Plaintiffs at page four of their September 4, 2020, letter. Plaintiffs cite to a nearly 20-year old monitoring report where patients' "long stays" in segregation were noted to be better served by consolidating them into ASU EOP Hubs. Quarantine units are not long term permanent housing like ASUs. Nor is normal programming expected to occur within a quarantine unit given its medical nature. In order to avoid further exposure, comingling between quarantined patients must be kept to a minimum in order to avoid the potential spread of COVID.

Page 3

Finally, in addition to the lack of a clinical need to set aside separate quarantine and isolation space for EOP and PIP patients, setting aside such units would be wasteful. Although numbers of MHSDS patients quarantining in non-MHSDS units is not available, the number of active COVID positive EOP and PIP patients statewide is low. On September 15, 2020, CDCR reported a total of eight EOP patients with COVID and only one PIP patient with COVID statewide. These numbers do not justify creating separate housing space when current quarantine medical units are available and mental health care is available on those units, as has historically been the practice.

II. Creating Additional Set Aside Space to Implement the Movement Matrix is not Necessary at this Time

Plaintiffs finally argue that CDCR should simply create more set aside quarantine space because the August 19, 2020, movement matrix may require more patients to quarantine at any given time prior to inter-institutional transfer. This issue is in the purview of the *Plata* action. CDCR does not believe that an expansion is warranted at this time. As stated above, the vast majority of patients quarantine in their own housing unit. The same process will occur prior to inter-institutional transfer. Movement being pursued at this time mainly involve patients already in single celled housing – inmates in segregation, medical transfers, and movement to and between higher levels of mental health care.

Sincerely,

Nick Weber

/s/ Nick Weber

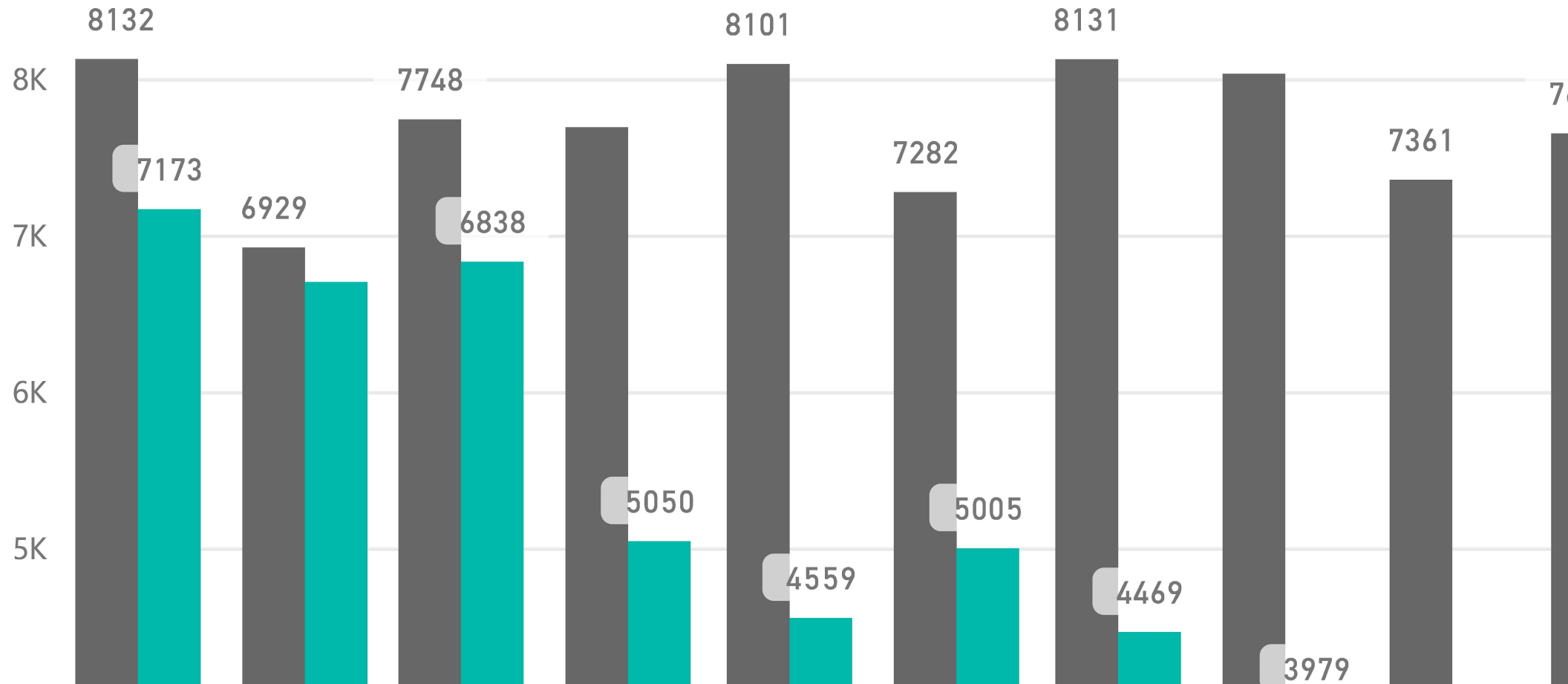
Attorney
CDCR
Office of Legal Affairs

EXHIBIT B



SRASHE & CSSRS Screener

● 2019 ● 2020 — CSSRS Total





Glossary

Case 2:9

COVID-19 MH Op

MHCB Location

P

►

2020

2019

20%

10%

0%

2020

2019

20%

10%

0%

Las Vegas



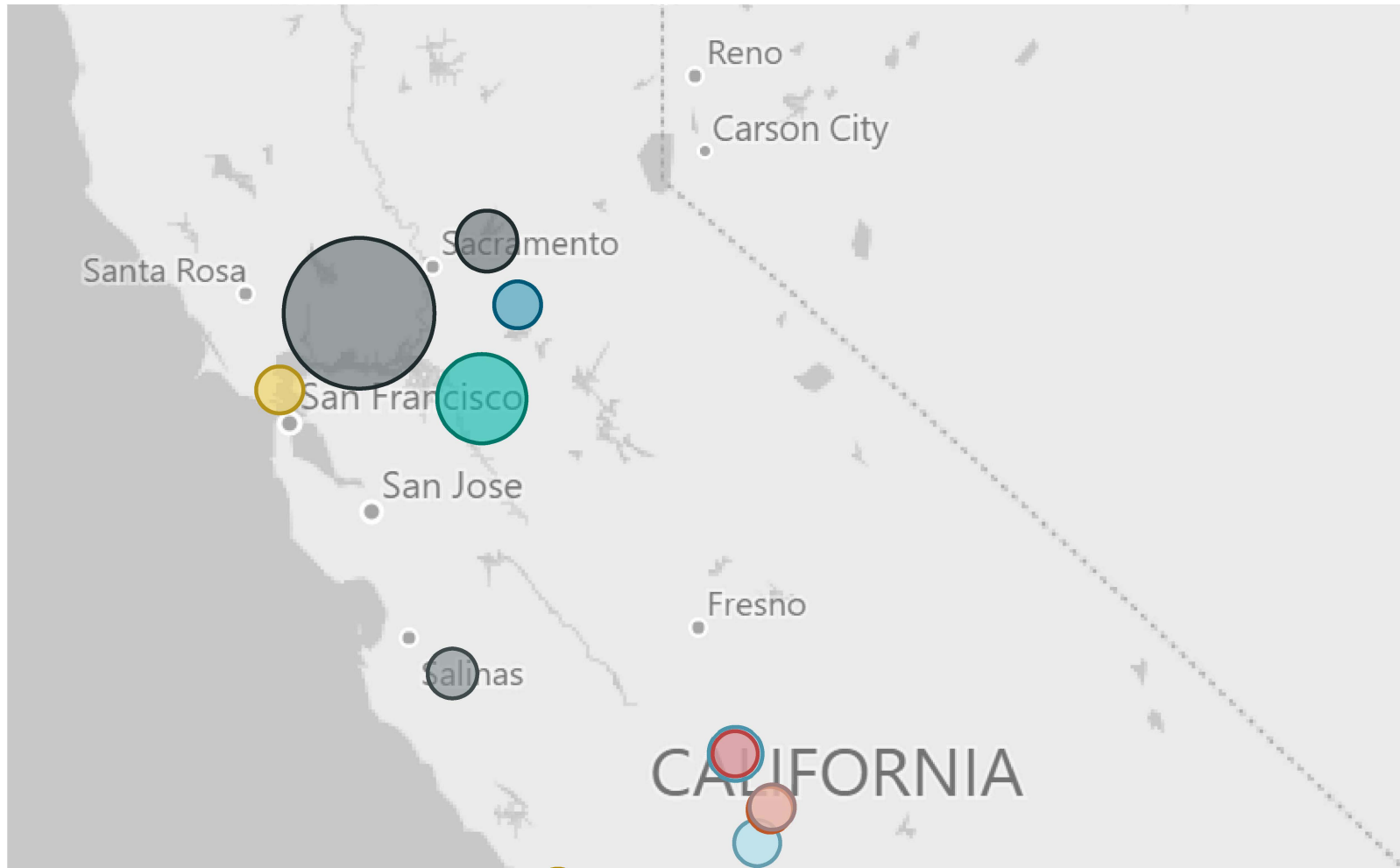
Glossary

Case 2:9

COVID-19 MH Op

Acute Location

Institution CHCF CIM CIW CMC CMF COR KVSP LAC ▶





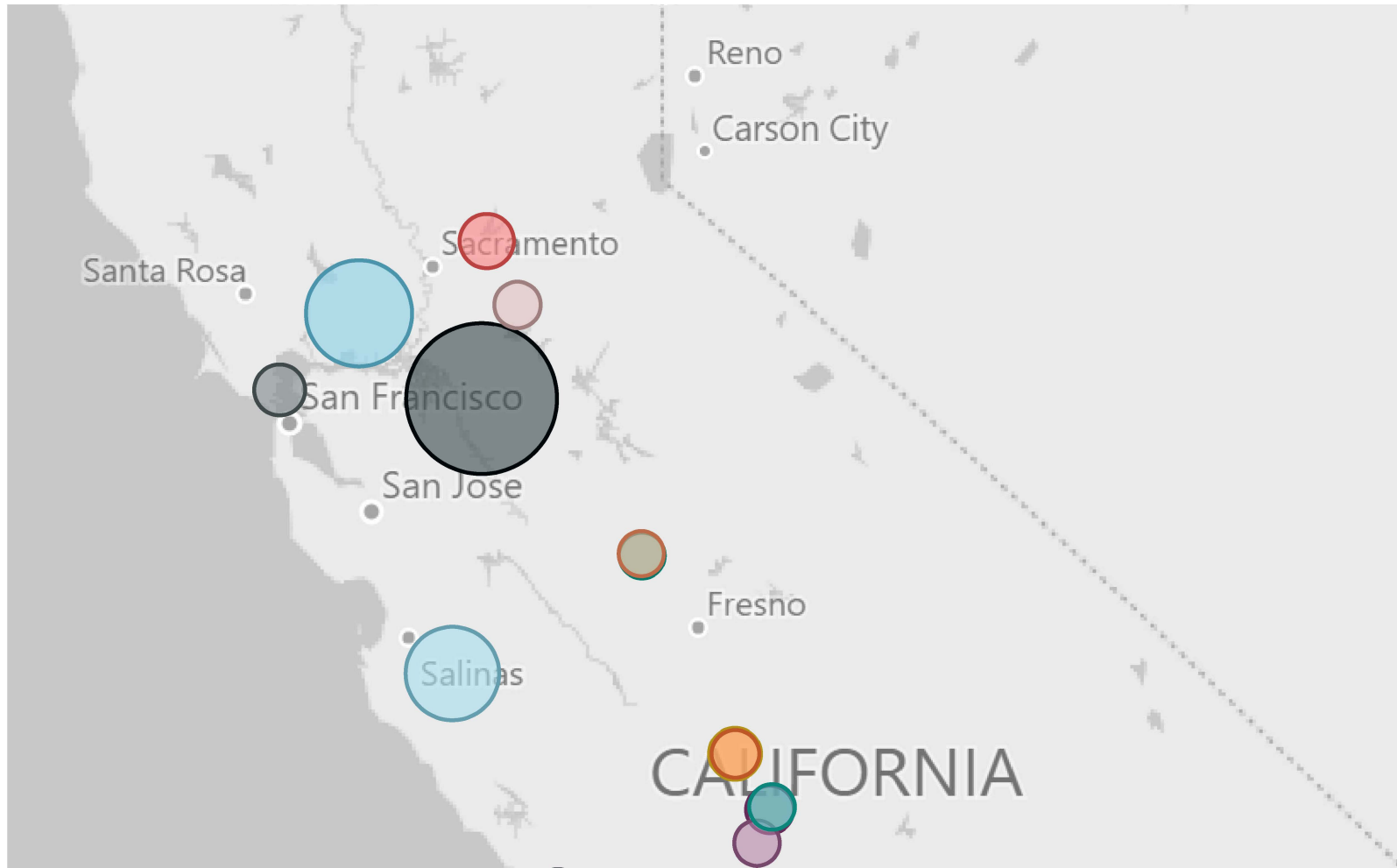
Glossary

Case 2:9

COVID-19 MH O

ICF Location

Institution ● CCWF ● CHCF ● CIM ● CIW ● CMC ● CMF ● COR ● KVSP ▶





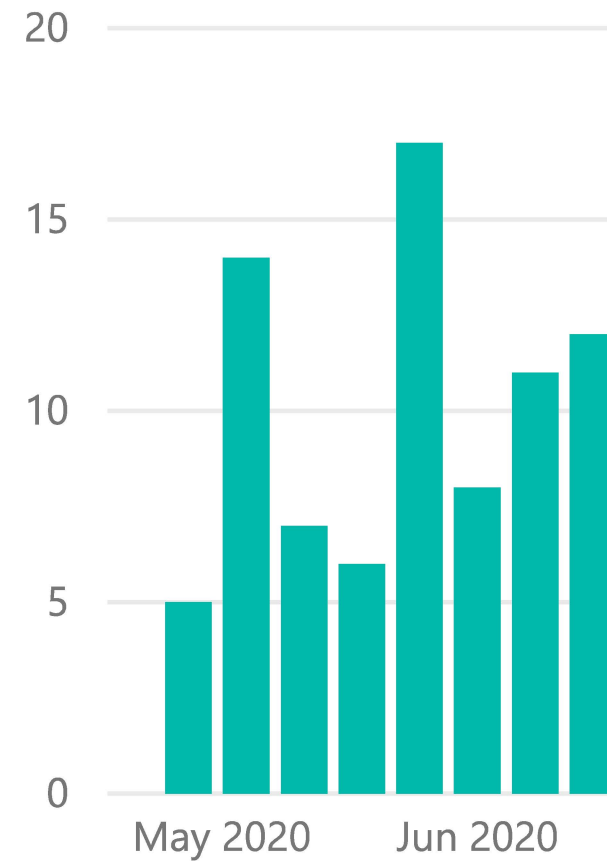
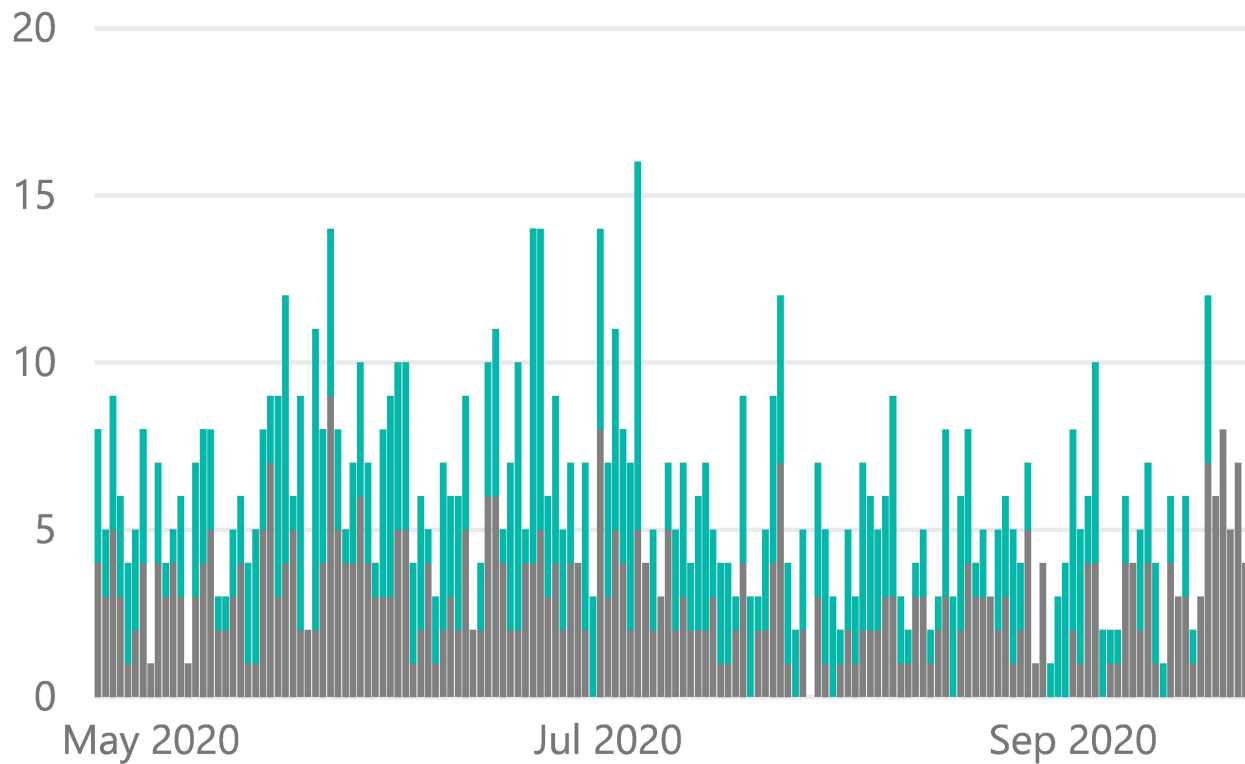
Glossary

Case 2:9

COVID-19 MH Op

5-Day Follow Up

● Incomplete ● Completed all 5 days



Discharge SRASHE & SPI



Glossary

Case 2:9

COVID-19 MH Operation

MAX: 5-Hrs. Tx. Offered Out of Cell

Ro

Developing a

Roun

Rounding

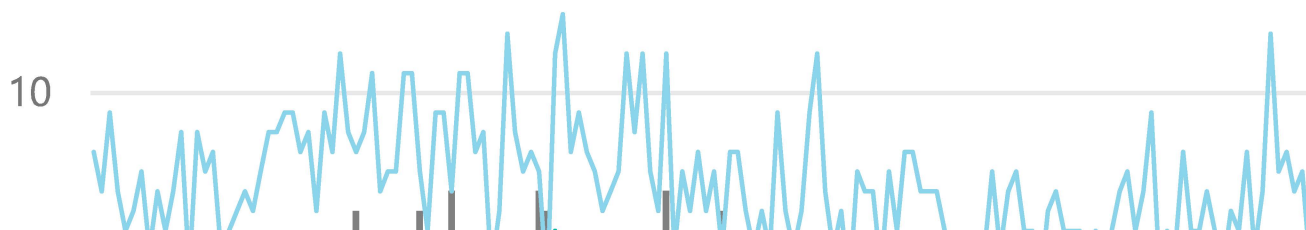
10

● 5+ Hours ● < 5 Hours



Length of Stay (days)

● MAX LOS >10 ● < 10 ● 10 to <20 ● 20 to <30 ● >30





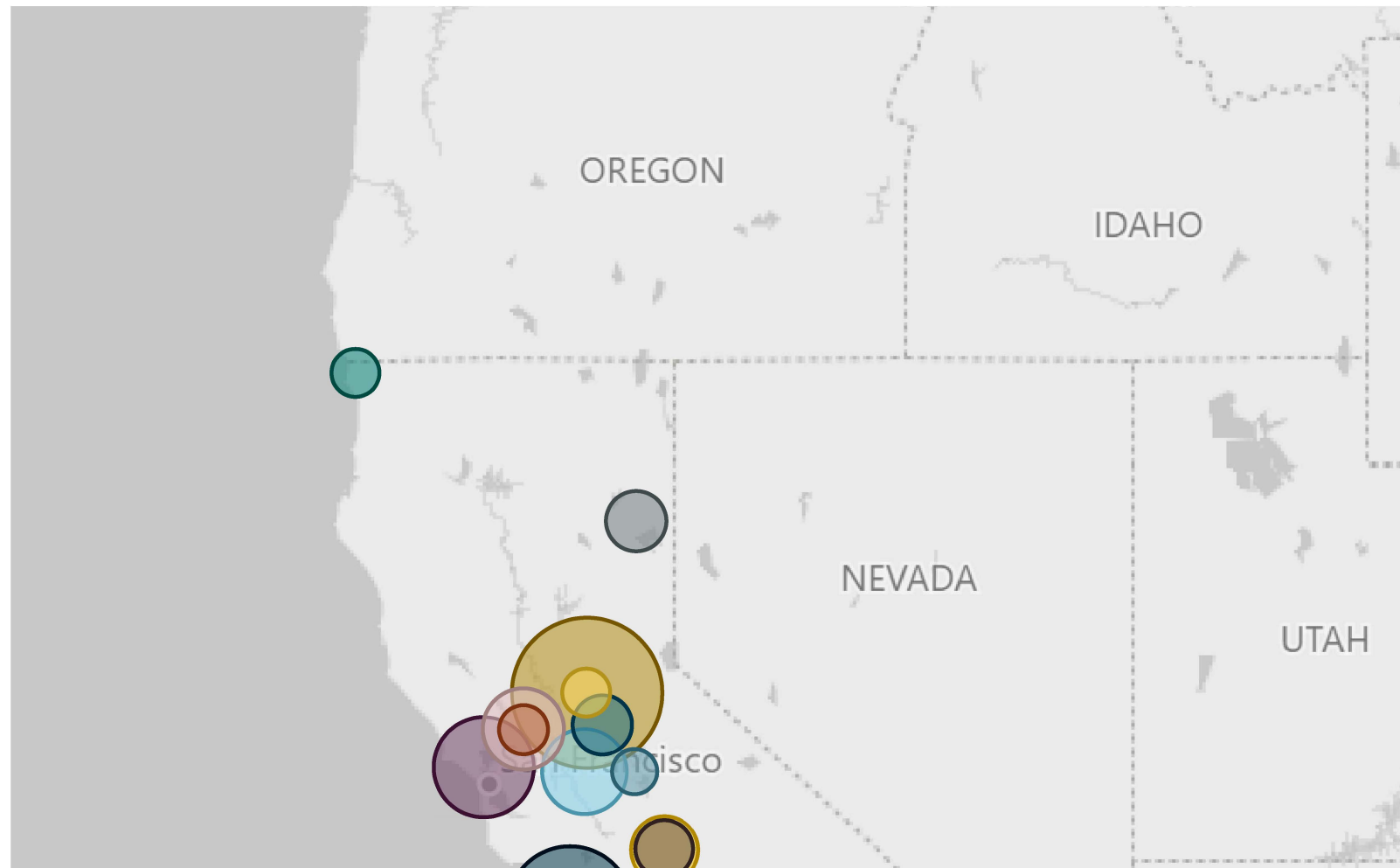
Glossary

Case 2:9

COVID-19 MH Operat

ELOC Location

Institution (Blank) ASP CCI CCWF CEN CHCF CIM CIW ▶



MHCB



Glossary

Case 2:9

COVID-19 MH Operational

Navigati

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RALPH COLEMAN, et al.,
Plaintiffs,
v.
GAVIN NEWSOM, et al.,
Defendants.

Case No. 2:90-CV-00520-KJM-DB

**[PROPOSED] ORDER REGARDING
QUARANTINE AND ISOLATION**

Judge: Hon. Kimberly J. Mueller
Date: October 1, 2020
Time: 2:00 pm

Judge: Kimberly J. Mueller

PROPOSED ORDER

The Court set this matter for expedited briefing on the question of whether the Defendants have addressed the needs of certain *Coleman* class members in the quarantine and isolation plans they have developed to address the COVID-19 pandemic. The Court directed Plaintiffs to file a motion on this question by close of business on September 25, 2020, and Defendants to file any opposition by close of business on September 29, 2020. The Court set the matter for a hearing on October 1, 2020.

Having considered the parties' briefs and arguments, as well as the orders on this issue in the *Plata v. Newsom* and *Armstrong v. Newsom* litigation, the Court finds that Defendants have not done enough to address the needs of *Coleman* class members in their quarantine and isolation plans. In order to approach a constitutionally adequate system of mental health care, Defendants must address the treatment and housing needs of patients who cannot function in a general population setting. The remedy in this case includes several specialized programs, including the Enhanced Outpatient Program (EOP) and several inpatient levels of care, delivered in CDCR's Psychiatric Inpatient Program (PIP) units, as well as Mental Health Crisis Beds (MHCBs). Each of these programs requires physical and programmatic separation from the general prison population in order to function properly. Defendants' quarantine and isolation plans, however, allow this physical separation to be erased in many instances, and in ways that are dangerous to the health and safety of *Coleman* class members. More work is needed in order to address these dangers. The Court orders several steps to accomplish this below. The Court finds that the relief ordered here is necessary to remedy the violation of federal rights, is narrowly tailored for that purpose, and is the least intrusive remedy available.

Defendants are ordered:

(1) to develop (within 14 days of this Order) a safe plan to set aside and maintain during the COVID-19 pandemic sufficient separate quarantine space for class members at the EOP and higher levels of care;

(2) to create (within 14 days of this Order) policies governing these higher-acuity

1 mental health patients in both quarantine and isolation settings, and

2 (3) to issue (within 7 days of this Order) an interim directive requiring all CDCR
3 institutions to ensure separate programming and appropriate mental health care for these
4 patients in existing quarantine and isolation spaces.

5 The Special Master is directed to consult with and assist Defendants as necessary to
6 develop the above policies, plans and directives, and to monitor Defendants' compliance
7 with these requirements.

8
9 DATED: _____, 2020

Honorable Kimberly J. Mueller
Chief United States District Judge